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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

FILED
SEP 08 2015
CLERK'S OFFICE
DETROIT

JOSEPH WHITING,
Petitioner,

vs.

Case No. 06-20465

UNITED STATES OF AMERICA,
Respondent

DEFENDANT'S REPLY TO THE GOVERNMENT'S RESPONSE
TO THE AMENDED MOTION PURSUANT TO 28 U.S.C. §2255 TO VACATE,
SET ASIDE, OR CORRECT SENTENCE

Now Comes, Joseph Whiting, petitioner and pro se, and respectfully submits the following information pursuant to 28 U.S.C. §2255:

ARGUMENT

In *United States v. Nagi*, 541 Fed. Appx 556 (6th Cir. 2013), which is the case at hand, the Sixth Circuit held that the statutory maximum for a violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1962 et seq., is twenty years unless the violation is based on a racketeering activity for which the maximum penalty includes life imprisonment, 18 U.S.C. §1963(a). The petitioner's sentences were based on 18 U.S.C. §1959(a)(1)

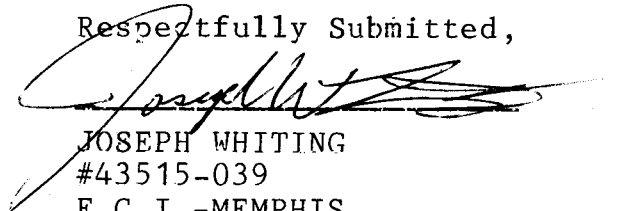
which carries Life. The fact that the government has agreed that this was an error changes not only the sentence on Count (13) in which the maximum was ten years, but also Count (1), Count (2), and Count (~~13~~) also becomes a violation of Appendi because Count (1) and (2) have a twenty year statutory maximum in which the petitioner was sentenced above the maximum on those counts. Then Count (~~13~~) has a statutory maximum of ten years. The government was correct in part in that Count (13) has a ten year statutory maximum, but the misapplied prong of 18 U.S.C. §1959 didn't only affect Count (13) but based on the misapplication of a Life sentence of 18 U.S.C. §1959(a)(1), the Court enhanced Counts (1), (2), and (~~13~~) above their statutory maximum in violation of Appendi. The petitioner should be resentenced on all counts.

CONCLUSION

Based on teh foregoing, and the government's response, the petitioner pray that this Honorable Court resentenced the petitioner on all counts.

Date: 09 / 02 / 2015

Respectfully Submitted,



JOSEPH WHITING
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CERTIFICATE OF SERVICE

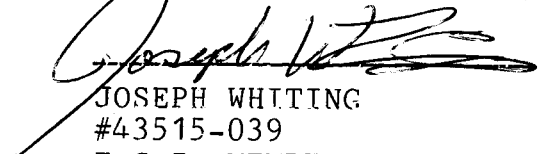
I, Joseph Whiting, certify that on *09/02* /2015, I mailed a copy of the Reply motion via first class mail prepaid to the following:

CHRISTOPHER GRAVELINE
ASSISTANT U.S. ATTORNEY
211 WEST FORT STREET
DETROIT, MICHIGAN 48226

I, Joseph Whiting, certify under the penalty of perjury that the foregoing is true and correct pursuant to 28 U.S.C. §1746.

Date: *09* / *02* /2015

Respectfully Submitted,

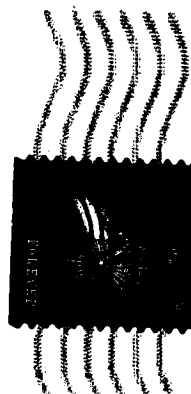

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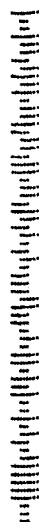
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